

No. 051014828 - 2006

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In The

**Supreme Court of the United States**

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VLADIMIR G. RADJABI-MOUGADAM,  
LEILA ALLAFI,

*Petitioners,*

v.

NADEJDA N. RADJABI-MOUGADAM,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Alabama Supreme Court**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Did the Alabama judicial system have jurisdiction to deprive the Petitioner, Leila Allafi, of her property when she did not have sufficient minimum contacts with the State to confer jurisdiction upon her?
2. Were the Petitioners denied due process of law because of the enforcement of a settlement agreement that was procured as the result of duress and coercion?
3. Was a settlement agreement that was entered into by the Petitioner due to be set aside because he was mentally ill at the time that he indicated his assent thereto?

## **PARTIES TO PROCEEDING**

The Petitioners are brother and half-sister. Vladimir Radjabi-Mougadam was raised in the Soviet Union but is a naturalized American citizen. Leila Allafi is a resident of Kazakhstan.

The Respondent is Nadejda Radjabi-Mougadam, a resident of Alabama who is the former wife of the Petitioner, Vladimir Radjabi-Mougadam.

## TABLE OF CONTENTS

	Page
Questions Presented .....	i
Parties to Proceeding .....	ii
Table of Authorities.....	iv
Petition for a Writ of Certiorari.....	1
Opinions Below .....	1
Constitutional Provisions Involved .....	2
Introduction .....	2
Statement of the Case.....	4
Reasons for Granting the Petition.....	8
Conclusion.....	15

## TABLE OF AUTHORITIES

	Page
CASES:	
<i>Burnham v. Superior Court</i> , 495 U.S. 604 (1990) .....	9
<i>First Nat'l Bank of Cincinnati v. Pepper</i> , 454 F.2d 626 (2d Cir. 1972) .....	11
<i>Dexter v. Hall</i> , 82 U.S. 9, 21 L.Ed. 73, 15 Wall. 9 (1872) .....	14
<i>Hanson v. Deckla</i> , 357 U.S. 235 (1958) .....	10
<i>International Halliwell Mines, Ltd. v. Cont'l Copper &amp; Steel Indus., Inc.</i> , 544 F.2d 105 (2d Cir. 1976) .....	11
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	9, 10
<i>McDonald v. Boslow</i> , 363 F.Supp. 493 (D. Md. 1973) .....	14
<i>Orient Shipping Rotterdam B.V. v. Hugo Neu &amp; Sons, Inc.</i> , 918 F.Supp. 806 (S.D.N.Y. 1996) .....	11
<i>Purdum v. Lilly</i> , 182 Md. 612, 35 A.2d 805 (1944) .....	14
<i>VKK Corp. v. Nat'l Football League</i> , 244 F.3d 114 (2d Cir. 2001) .....	11
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	9
FEDERAL CONSTITUTIONAL PROVISIONS:	
Amendment XIV to the United States Constitution .....	2
FEDERAL STATUTORY PROVISIONS	
28 U.S.C. § 1257 .....	2

## **PETITION FOR A WRIT OF CERTIORARI**

Vladimir G. Radjabi-Mougadam and Leila Allafi respectfully petition for a writ of certiorari to review the judgment of the Alabama Supreme Court in this case.

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### **OPINIONS BELOW**

The Circuit Court of Madison County, Alabama entered a Judgment on January 29, 2004 in which it denied the Petitioners' Motions to Alter, Amend or Vacate a Judgment of Divorce. The Petitioners appealed from that decision. A copy of the Final Judgment of Divorce is included in the Appendix to this Petition. (App. 6)

On June 24, 2005, the Alabama Court of Civil Appeals issued an order in which it affirmed the trial court's judgment without an opinion. A copy of said order is included in the Appendix to this Petition. (App. 1)

Petitioners filed Applications for Rehearing on July 8, 2005. The Alabama Court of Civil Appeals denied those Applications on September 23, 2005. A copy of said order is included in the Appendix to this Petition. (App. 3).

On October 7, 2005, the Petitioners filed Petitions for Certiorari Review in the Supreme Court for the State of Alabama. The Petition for Writ of Certiorari was denied and a Certificate of Judgment was issued on November 10, 2005. A copy of said Certificates of Judgment are included in the Appendix to this Petition. (App. 4, 5).

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## **JURISDICTION**

The Supreme Court of Alabama entered its judgment on November 10, 2005. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1257.

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## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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## **INTRODUCTION**

This petition involves a state-court divorce judgment and a judgment involving an alleged fraudulent conveyance of real property. Nadejda N. Radjabi-Mougadam (hereinafter referred to as "the Wife" or "Nadejda") filed a complaint for a divorce on December 13, 2001 in the Circuit Court of Madison County, Alabama. Her husband, Vladimir G. Radjabi-Mougadam (hereinafter referred to as "the Husband" or "Vladimir") filed an answer and counterclaim.

In the divorce complaint, the Wife also asserted a claim against the Husband's half-sister, Leila Allafi (hereinafter referred to as "Leila"). Specifically, the Wife alleged that Vladimir had made fraudulent conveyances of certain real property to Leila approximately one year prior to the filing of the divorce action. She further alleged that said transfers were made in an attempt to defraud her of property which would be subject to division in the divorce action.

Leila is a foreign national who is a resident of the Republic of Kazakhstan. Vladimir was raised in the Soviet Union. He and the Wife married in January 1979.

In 1997, the Husband borrowed \$370,000 from his father and Leila in Kazakhstan. A promissory note was executed, evidencing said transaction.

In 2000, Leila came to the United States to collect the monies owed to her and her father. Unfortunately, the Husband and the Wife were unable to pay same. Because they lacked the financial resources necessary to repay the debt and in recognition of the validity of the debt, the Husband and Wife offered to transfer title to their marital residence to Leila. In addition, the Husband transferred his solely-owned two-bedroom beach condominium unit at Phoenix V to Leila. It was these properties which were referenced in the divorce complaint as having been fraudulently conveyed. Husband and Wife still have ownership of another three-bedroom beach condominium at Pelican Point.

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## STATEMENT OF THE CASE

Although the divorce complaint and claim for fraudulent transfer were filed on December 13, 2001, no attempt to serve Leila was made until June 11, 2002. The first attempt was made pursuant to Alabama personal service statute, Ala.R.Civ.P. 4.4(b)(5). Because Leila was living in Kazakhstan, this attempt was unsuccessful.

On September 16, 2002, the Wife attempted to serve Leila by publication. The trial court granted the Wife's motion to effectuate service in this manner. Leila became aware of the attempted service when her brother, Vladimir, informed her about it. Leila contended that this attempt at service was being made fraudulently. Clearly, her sister-in-law knew that she was living in a foreign land and did not have access to local newspapers. This attempted service was made in an effort to defraud Leila of her property.

An Alias Summons was purportedly served on Leila in Huntsville, Alabama on September 13, 2002. Leila was not even in the State of Alabama at the time that this service was allegedly made.

On October 23, 2002, Leila's attorney, William Burgess, Esq., filed an "Acceptance of Service" that was purportedly executed by Leila. Leila vehemently denies having authorized the filing of this document or having executed same. Moreover, the document was written in English and no translation of same was ever made. Leila contends that in her country, she would never have affixed her signature to a document without having first obtained a translation. It is customary in Kazakhstan to have all documents translated and a translator will certify the translation, much like a notary public in the United States

will do. Leila's signature on this document is not authentic and the witness is unidentifiable.

Leila's attorney raised the issue of lack of personal jurisdiction but the trial court failed to rule on same.

After this case had been pending for almost two years, it was set on a trial docket. Leila was ordered to appear for trial and two witnesses from Kazakhstan were subpoenaed to participate. On September 22, 2003, all parties appeared in court accompanied by his or her attorney of record. An interpreter had to be utilized because Leila spoke or read no English.

At the September 22, 2003 hearing, the attorneys indicated that they had reached a resolution of this matter. The Wife's attorney recited the terms of the settlement into the record. Paramount to this appeal was the purported reliance by the attorneys on a document referred to as "Exhibit A to the suggested relief in Plaintiff's Exhibit 1." Unfortunately, this ubiquitous document apparently never existed and therefore, was not made part of this Court's record.

Pursuant to the recited settlement, the Husband was divested of all interest in the jointly owned three-bedroom beach condominium at Pelican Point and same was vested in the Wife. Leila's interest in the two-bedroom beach condominium at Phoenix V that was vested in her in 2000 by Vladimir was also stripped from her and given to the Wife. That unit was to be listed for sale with a realtor and sold at a price to be recommended by a realtor.

Leila explained the difficulties that she had in communicating with her attorney prior to the trial. Her inability to communicate in English and the geographical

barrier that existed impeded her ability to obtain sound legal advice. She described her emotions as "shattered" and stated that she was scared because she was unfamiliar with the American justice system. She claimed that her lawyer told her that she could lose everything. She did not understand what was happening at the time that the settlement was purportedly reached. A transcript of the settlement colloquy reflects that first of all, the interpreter hired to assist Leila was not qualified, inasmuch as she had never participated in a prior legal proceeding. The interpreter was not chosen by Leila or her attorney. Moreover, at the actual time that the settlement was being recited into the record, the transcript reflects that the interpreter was not translating to Leila. No official translation was made nor was there a copy of what the translator said to Leila anywhere in the record. At the time that the judge asked the parties if they agreed to the settlement, the translator answered "yes" before Leila even had an opportunity to do so.

Early on the morning after the settlement was purportedly recited into the record, Vladimir and Leila discussed the matter and Leila, for the first time, became clearly aware of the ramifications of her agreement. Vladimir called the attorneys at approximately 9:00 a.m. and advised them that neither he nor his half-sister would sign the settlement because it was made under duress and coercion and that neither he nor his half-sister understood the terms of the settlement. In spite of this knowledge, the attorneys signed on behalf of the clients without their authorization and a judgment was entered.

The judgment that was entered by the trial court did not reflect the agreement that the parties had recited in court. For instance, the transcript of the settlement

colloquy reflects that each party would receive his or her personal articles and effects. The Divorce Judgment contradicted that stipulation by awarding the contents of certain parcels of real property to the Wife, irrespective of who owned same. Moreover, in the stipulation before the court there was no mention of splitting the rental income or of the \$8,000 lien owed to Leila. Leila and Vladimir were stripped of their personal property.

On October 30, 2003, Vladimir filed a Motion to Alter, Amend or Vacate the Judgment. In that motion, he explained that he was suffering from severe depression at the time that the purported settlement agreement was reached. Moreover, the judgment entered by the trial court varied from the terms recited in open court. The judgment left Vladimir with nothing and was patently unfair. A hearing on this motion took place on December 23, 2003. At that time, it was revealed that the Husband was under the influence of various prescription medications at the time the purported settlement was entered, including Paxil and Clonapin, a strong narcotic. He did not have the proper capacity to make the judgments that were necessary to protect his own best interests. Counsel for Vladimir offered to introduce testimony regarding his mental condition but was thwarted.

Leila also filed a Motion to Alter, Amend or Vacate the judgment. She argued that the judgment was void because the trial court lacked personal jurisdiction over her and because she was denied due process of law. The trial court denied both postjudgment motions and the purported settlement agreement was permitted to stand in its entirety.